



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2013

Mr. Steven Meyer
Assistant City Attorney
Legal Department
Arlington Police Department
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2013-05566

Dear Mr. Meyer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 483577 (Reference No. 10157).

The Arlington Police Department (the "department") received a request for information pertaining to the arrest of the requestor's client, guidelines and manuals related to the use of tasers, and complaint information pertaining to use of force involving specified officers. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

¹We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The information in Exhibit D consists of completed reports and investigations subject to section 552.022(a)(1). Although you raise section 552.103 of the Government Code for this information, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). As such, the department may not withhold Exhibit D under section 552.103. However, because sections 552.102, 552.117, and 552.130 of the Government Code make information confidential under the Act, we will address the applicability of these exceptions to the information at issue.² We will also consider your arguments for the submitted information not subject to section 552.022.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses information that other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See Fam. Code § 51.02(2)*. Section 58.007 provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). Upon review, we find the information in Exhibit C involves allegations of juveniles engaged in delinquent conduct occurring after September 1, 1997; therefore, the information at issue is subject to section 58.007. However, the submitted information reveals that the requestor is the legal representative of one of the juvenile offenders listed in the information at issue. Under section 58.007(e), the requestor has a right to inspect or copy law enforcement records pertaining to his client. *See id.* § 58.007(e). Section 58.007(j)(1) provides, however, that any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). In addition, section 58.007(j)(2) states that information subject to any other exception to disclosure under the Act or other law must be redacted. *Id.* § 58.007(j)(2). Accordingly, we will address your argument under section 552.108(a)(1) of the Government Code for Exhibit C as well as the information in Exhibit E.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibits C and E relate to a pending criminal investigation and possible prosecution. Based on your representation and our review, we conclude that the release of the information

at issue would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is generally applicable to Exhibits C and E.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold Exhibits C and E under section 552.108(a)(1).³ However, in releasing basic information from Exhibit C, the department must redact any personal identifying information of the juvenile offenders who are not the requestor's client pursuant to section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. See Fam. Code § 58.007(j)(1).

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The department must withhold the dates of birth we have marked under section 552.102 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. See Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit, title, or registration issued by an agency of this state or another state or country. *Id.* § 552.130(a)(1)-(2). Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.


³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information except to note section 552.103 of the Government Code does not generally except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).

In summary, with the exception of basic information, the department may withhold Exhibits C and E under section 552.108(a)(1) of the Government Code.⁴ In releasing basic information from Exhibit C, the department must redact any personal identifying information of the juvenile offenders who are not the requestor's client pursuant to section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The department must withhold the information we have marked under sections 552.102, 552.117(a)(2), and 552.130 of the Government Code. The department must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 483577

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

⁴We note that the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.